ACCEPTANCE OF PART OF A DEBT AS SATISFACTION OF THE WHOLE.—In earliest times, if a debtor paid only a portion of the sum due, but the creditor accepted this as full satisfaction, the pre-existing obligation was thereby utterly destroyed.[1] The only question to be considered was whether the parties had actually agreed upon the satisfaction, and, probably later, whether it was reasonable.[2] This forerunner of what is now known as accord and satisfaction was burdened with no questions of consideration; for simple contract and its attendant doctrines had not yet become established in the law.[3] Later, however, accord and satisfaction came to be regarded as a contract. Its effectiveness lies in the creditor's implied agreement not to sue on the old obligation, which is regarded as still existing. This new agreement obviously requires consideration, and since no one can be regarded as suffering a detriment in performing his just obligations, or as having a legal right to refrain from so doing, mere performance in part can never furnish this necessary element.

Therefore it has until recently been unanimously held that a payment of a less sum can never be satisfaction of an undisputed debt, but that in spite of his agreement the creditor can subsequently recover the residue.[4] While this result is, on grounds of strict logic, as unimpeachable now as when first announced in a dictum by Lord Coke,[5] developing business conditions clamor for the abrogation of the rule. The practical importance of the difference between the right to a thing and the actual possession of it demands recognition, and consequently the common law rule has been constantly criticized by textwriters, and even by those courts which adhere to it, and there is a growing demand that a creditor should be permitted to make a binding compromise with his debtor.[6] This demand has produced legislative enactments in several states, compelling effect to be given to the agreement of the parties.[7] Moreover, the old rule has recently been abrogated in at least one state by avowed judicial legislation, based partly upon finding the necessary consideration in the benefit accruing to the creditor.[8]

Aside from such open repudiation, and possibly furnishing an easy transition to it, courts have from the time the rule was established eagerly seized upon any element in the transaction between the debtor and the creditor that might be regarded as consideration for the latter's new promise. Thus, since the debtor is not bound to pay

[1]Pollock, Contracts, (Williston's ed.) 828, 837; 12 Harv. L. Rev. 515, 521 *et seq.*

[2]See Cumber *v.* Wayne (1721) 1 Str. 426.

[3]See note 1 *supra.*

[4]Anson, Contracts, (8th ed.) 106, 383; Page, Contracts, § 313; 3 COLUMBIA LAW REVIEW 419; 4 *id.* 377.

[5]Pinnel's Case (1598) 5 Coke 117.

[6]See Foakes *v.* Beer (1884) L. R. 9 A. C. 605; Milliken *v.* Brown (Pa. 1829) 1 Rawle 391; Elbert *v.* Johns (1903) 206 Pa. 395; 57 Cent. L. J. 244; 12 Harv. L. Rev. *ubi supra.*

[7]Cal. Civ. Code (1909) § 1521 *et seq;* Ga. Code (1911) §§ 4329, 4330; Maine Rev. Stat., (1003) Ch. 84, § 59; No. Car. Code Civ. Proc. (1008) Vol. 1. § 859; No. Dak. Civ. Code (1905) § 5269 *et seq;* So. Dak. Civ. Code (1910) § 1180; Va. Code (1904) § 2858. Two other states require in addition that the transaction be in writing. Ala. Civ. Code (1907) § 3974; Tenn. Code (1896) § 5570, 5571.

[8]Clayton *v.* Clark (1897) 74 Miss. 499; see also Dreyfus *v.* Roberts (1905) 75 Ark. 354; Frye *v.* Hubbel (1907) 74 N. H. 358.

anything but money, the tender and acceptance of anything else as satisfaction, regardless of how much less valuable it may be, is binding.[9] So a negotiable instrument for a less amount made by a third party satisfies the debt,[10] and even the debtor's own check or note may have this effect,[11] though if the accord is to accept a less sum of money, and something other than money is transferred merely as a convenient method of payment, a fine distinction is drawn, and the debtor is deemed to have done nothing he was not already bound to do.[12] Again, when a debt is due at a certain time and place, acceptance of a smaller sum before that time or at a different place constitutes a binding accord and satisfaction.[13] And an insolvent who pays a portion of a debt furnishes consideration for a promise not to claim the residue by refraining from voluntary bankruptcy.[14]

It is of course obvious that a release under seal is an effective bar to the enforcement of a debt, and no consideration is necessary.[15] A few courts have held that when a receipt in full is given upon payment of part of a debt, this is a valid satisfaction of the whole debt. This is due either to a mistaken analogy to a release under seal,[16] or to regarding the transaction as a gift of the obligation to pay the residue, and the receipt as the essential delivery.[17] This holding seems to be an easy method of avoiding the harshness of the common law rule that payment of a less sum cannot be satisfaction of a greater debt.

When a creditor accepts a less sum in satisfaction of a greater unliquidated claim, however, the question is different from that presented when the claim is liquidated. In paying even the less amount the debtor surrenders his right to have the amount of his liability determined in court, and this furnishes a consideration for the creditor's agreement to regard the part payment as full satisfaction.[18] This is equally true when, as in the recent case of *Brewster* v. *Silverstein* (N. Y. 1912) 137 N. Y. Supp. 912, the original debt is liquidated, but the existence or amount of a set-off is in dispute.[19]

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[9]Wakinson *v.* Inglesby (N. Y. 1810) 5 Johns. 386; see Merchants' Bank *v.* Davis (1847) 3 Ga. 112.

[10]Bidden *v.* Bridges (1887) L. R. 37 Ch. Div. 406; Brooks *v.* White (1841) 43 Mass. 283.

[11]Sibree *v.* Tripp (1846) 15 M. & W. 22; Jaffrey *v.* Davis *supra; contra,* Cumber *v.* Wayne *supra.*

[12]Bunge *v.* Koop (1872) 48 N. Y. 225; Howard *v.* Norton (N. Y. 1873) 65 Barb. 161; Warren *v.* Skinner (1850) 20 Conn. 559.

[13]Singer Sewing Mach. Co. *v.* Lee (1907) 105 Md. 663; Harper *v.* Graham (1851) 20 Oh. 105; *cf.* Saunders *v.* Whitcomb (1900) 177 Mass. 457.

[14]Engbretson *v.* Seiberling (1904) 122 Ia. 522; Melroy *v.* Kemmerer (1907) 218 Pa. 381; Dawson *v.* Beall (1882) 68 Ga. 328. No accord and satisfaction results, however, when the original debt was not such a one as would be barred by bankruptcy. Schlessinger *v.* Schlessinger (1907) 39 Colo. 44.

[15]Clark, Contracts, § 294; 2 Parsons, Contracts, (9th ed.) *713 *et seq.*

[16]See Dreyfus *v.* Roberts *supra;* Flynn *v.* Hurlock (1900) 194 Pa. 462.

[17]Gray *v.* Barton (1873) 55 N. Y. 68; McKenzie *v.* Harrison (1890) 120 N. Y. 260; Holmes *v.* Holmes (1902) 129 Mich. 412.

[18]Clark, Contracts, 193; Anson, Contracts, (8th ed.) 106, 383.

[19]Tanner *v.* Merrill (1895) 108 Mich. 58; but see Cartan *v.* Tackaberry Co. (1908) 139 Ia. 586.